

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the) Case No. 07-MJ-0177-JMA
Extradition of)
ALDO OMAR CROTTE SAINEZ) (1) ORDER GRANTING IN PART AND
) DENYING IN PART REQUEST FOR
) EXTRADITION;
)
) (2) ORDER DENYING MOTION TO
) STRIKE TESTIMONY OF RUBEN
) GONZALEZ AT EXTRADITION
) HEARING [Doc. No. 26]; AND
)
) (3) CERTIFICATION OF
) EXTRADITABILITY

This is a proceeding under 18 U.S.C. § 3184 pursuant to a request by the United Mexican States (hereafter "Mexico") through the United States Government (hereafter "the Government") for the extradition from the United States to Mexico of Aldo Omar Crotte Sainez (hereafter "Crotte" or "Respondent") under the provisions of the Extradition Treaty Between the United States of America and The United Mexican States, May 4, 1978 (hereafter "Treaty").

For the reasons set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** the request for extradition, and **DENIES** the motion to strike testimony of Ruben Gonzalez.

1 I.

2 Background3 A. Procedural History

4 In late December 2006, Crotte was arrested by Immigration
 5 and Customs Enforcement officials at the San Ysidro Port of Entry
 6 while traveling from Mexico to San Francisco. Respondent's Resp.
 7 & Opp'n [Doc. No. 17] (hereafter "Resp't.'s Br.") at 8;
 8 Diplomatic Note No. 02187 dated Mar. 23, 2007 from Ambassador
 9 Arturo Sarukhan to Secretary of State Condoleezza Rice (hereafter
 10 "Diplomatic Note") at 1.¹ Crotte was thereafter placed into
 11 removal proceedings before the Immigration Court in San Diego.
 12 Resp't.'s Br. at 8 & Ex. B at 282.²

13 On January 24, 2007, the Government filed a Complaint for
 14 Provisional Arrest With a View Towards Extradition against Crotte
 15 on behalf of Mexico (Doc. No. 1), and the Court issued an arrest
 16 warrant for Crotte. The warrant was executed on March 12, 2007
 17 and Crotte made his first appearance in this matter that same
 18 day. Doc. Nos. 3, 5. On March 14, 2007, the Government moved
 19 the Immigration Court to terminate the removal proceedings.
 20 Resp't.'s Br., Ex. B at 282. The removal proceedings were
 21 terminated on March 20, 2007. *Id.* at 283.

22 On March 23, 2007, Mexico requested the extradition of
 23 Crotte by submitting Diplomatic Note No. 02187 to the Secretary

24 ¹According to the Diplomatic Note, Crotte was arrested on
 25 December 29, 2006. Respondent states that the arrest took place on
 26 December 25, 2006.

27 ²Crotte was born in Mexico on September 29, 1969. Diplomatic
 28 Note at 4. He states that he has resided lawfully in the United
 States since 1980 and has been a Permanent Resident since 1989.
 Resp't.'s Br. at 9 & Ex. B at 277. He also states that he has lived
 at the same address in San Francisco since 1982. *Id.* at 9.

1 of State of the United States. Mexico seeks to extradite Crotte
 2 to answer charges of (1) Simple Intentional Homicide (hereafter
 3 "homicide") and (2) Battery/Bodily Injuries (hereafter "battery")
 4 pursuant to an arrest warrant issued by the Eleventh Judge of the
 5 Criminal Court of the First Judicial District in Puente Grande,
 6 state of Jalisco, on November 5, 1999. Diplomatic Note at 1;
 7 Documentary Evidence Accompanying Extradition Request (hereafter
 8 "Doc. Evid."), Ex. 14.

9 The Government filed a Supplemental Memorandum in Support of
 10 Mexico's Request for Extradition on May 1, 2007. Doc. No. 6.
 11 Crotte was denied bond on June 19, 2007. Doc. No. 14. On August
 12 10, 2007, Crotte filed a Response and Opposition to the
 13 Government's Request for Extradition. Doc. No. 17. The
 14 Government's Reply was filed on August 21, 2007. Doc. No. 20.
 15 On September 11, 2007, the Court granted Crotte's request for a
 16 continuance of the extradition hearing, and continued the hearing
 17 to September 26, 2007. Doc. No. 22. On September 18, 2007,
 18 Crotte filed a Request for Extension of Time to File Court
 19 Ordered Brief and for the Government to Produce Text of Legal
 20 Provisions Under Article 10(2)(d). Doc. No. 23. In response,
 21 the Government filed an Amended Reply to Response and Opposition
 22 to Request to Certify Extradition. Doc. No. 24.

23 The Court held an extradition hearing on September 26, 2007.
 24 At the Court's request, Ruben Gonzalez answered certain questions
 25 posed by the Court at the conclusion of the hearing.³ Following

26
 27 ³Mr. Gonzalez, who attended the extradition hearing but was not
 28 proffered by the Government as an expert witness, is a counsel with
 the PGR, which, according to the Government, "is the Spanish acronym
 for the equivalent federal prosecuting agency from Mexico."
 Transcript of Proceedings, Sept. 26, 2007 (hereafter "Tr."), 4:17-21.

1 the hearing, on September 28, 2007, the Government filed a motion
2 to strike the testimony of Mr. Gonzalez. Doc. No. 26. Crotte
3 filed an opposition to the Government's motion to strike on
4 October 9, 2007. Doc. No. 27.

5 B. The Request for Extradition

6 Mexico seeks to extradite Crotte to answer the following
7 charges:

8 (1) Homicide of Daniel Sandoval Abundis ("Sandoval") on
9 June 26, 1999, in violation of Article 213 of the Penal Code of
10 the State of Jalisco, Mexico (hereafter "Jalisco Penal Code");
11 and

12 (2) Battery of Julio Cesar Sevillano Gonzalez ("Sevillano")
13 on June 26, 1999, in violation of Article 206 of the Jalisco
14 Penal Code.

15 The evidence submitted in support of the extradition request
16 is comprised of:

17 (A) Diplomatic Note No. 02187 dated March 23, 2007 from
18 Ambassador Arturo Sarukhan of the Embassy of Mexico to
19 Condoleezza Rice, Secretary of State of the United States,
20 certified and authenticated on April 20, 2007; and

21 (B) Seventeen items of documentary evidence, certified and
22 authenticated on March 16, 2007 by David T. Donahue, Minister
23 Counselor for Consular Affairs for the United States, including:

24 (1) Ministerial attestation by Carlos Romero Venegas,
25 Public Prosecutor of the Office of the Attorney General
26 for the State of Jalisco ("Public Prosecutor Romero")
27 dated June 26, 1999.

28 (2) Statement by Jose Antonio Nava Valadez to Public

1 Prosecutor Romero on June 26, 1999.

2 (3) Ministerial attestation by Public Prosecutor Romero
3 dated June 27, 1999.

4 (4) Qualificative Medical-Legal Report prepared by Luz
5 Elena Lopez Villaseñor of Green Cross Municipal Medical
6 Services describing wounds suffered by Sevillano.

7 (5) Statement by Maria Luisa Cuevas Dueñaz(s) to Public
8 Prosecutor Jose De Jesus Herrera Bocanegra ("Public
9 Prosecutor Herrera") on July 14, 1999.

10 (6) Statement by Sevillano to Public Prosecutor Romero on
11 June 27, 1999.

12 (7) Death record for Sandoval dated June 27, 1999.

13 (8) Autopsy report for Sandoval dated June 28, 1999.

14 (9) Photographs of Sandoval's body.

15 (10) Statement by Salvador Gonzalez Gonzalez to Public
16 Prosecutor Herrera on July 14, 1999.

17 (11) Statement by Carlos Crotte Guevara to Public Prosecutor
18 Herrera on July 14, 1999.

19 (12) Statement by Sevillano to Public Prosecutor Horacio
20 Vega Pamanes on September 2, 1999.

21 (13) Request for issuance of arrest warrant by Public
22 Prosecutor Herrera dated September 24, 1999, containing
23 summary of evidence and Public Prosecutor's findings.

24 (14) Arrest warrant issued by the Eleventh Judge of the
25 Criminal Court of the First Judicial District in Puente
26 Grande, state of Jalisco, on November 5, 1999.

27 (15) Writ by the Court Clerk of the Eleventh Judge of the
28 Criminal Court dated April 22, 2005 certifying the

validity of the arrest warrant.

(16) Excerpts from Jalisco Penal Code.

(17) Statement by Cesar Benitez Castillo dated February 7, 2007 identifying person in accompanying photograph as Crotte.

II.

Legal Standards

Extradition from the United States is a diplomatic process that is initiated by a request from the nation seeking extradition directly to the Department of State. Prasoprat v. Benov, 421 F.3d 1009, 1010 (9th Cir. 2005). "After the request has been evaluated by the State Department to determine whether it is within the scope of the relevant extradition treaty, a United States Attorney . . . files a complaint in federal district court seeking an arrest warrant for the person sought to be extradited." Blaxland v. Commonwealth Dir. of Pub. Prosecutions, 323 F.3d 1198, 1207 (9th Cir. 2003). "Extradition treaties are to be liberally construed so as to effect their purpose, that is, to surrender fugitives for trial for their alleged offenses." Valentine v. United States ex rel. Neidecker, 299 U.S. 5, 14 (1936).

22 The authority of a magistrate judge serving as an
23 extradition judicial officer is limited to determining an
24 individual's eligibility to be extradited, which is done by
25 ascertaining (1) whether the crime is an extraditable offense
26 under the subject treaty and (2) whether probable cause exists to
27 sustain the charge. Vo v. Benov, 447 F.3d 1235, 1237 (9th Cir.
28 2006). If the Court determines that these requisite elements

1 have been met, the findings are incorporated into a certificate
 2 of extraditability. The certificate is forwarded to the
 3 Department of State. The Secretary of State makes the ultimate
 4 decision on whether to surrender the fugitive. 18 U.S.C. § 3186.

5 III.

6 Discussion

7 A. Determination of Whether the Offenses are Extraditable

8 In determining whether the subject crimes are extraditable
 9 offenses, the Court must find that an extradition treaty exists
 10 between the United States and Mexico, and that the crimes charged
 11 are covered by the treaty. Vo, 447 F.3d at 1237 (citing 18
 12 U.S.C. § 3184). The Government has submitted a declaration from
 13 Gregory Wierzynski of the State Department in Washington, D.C.,
 14 dated April 17, 2007, which verifies that the Extradition Treaty
 15 between the United States and Mexico, TIAS 9656, was signed on
 16 May 4, 1978 and is presently in full force and effect.

17 Wierzynski Decl., ¶ 3. A copy of the Treaty is attached to the
 18 declaration. Crotte does not contest that the Treaty is in full
 19 force and effect. The Court thus finds that there is a valid
 20 extradition treaty in full force and effect between the United
 21 States and Mexico.

22 The Treaty sets forth the following with respect to
 23 "Extraditable Offenses":

24 1.-Extradition shall take place, subject to this
 25 Treaty, for wilful acts which fall within any of the
 26 clauses of the Appendix and are punishable in
 27 accordance with the laws of both Contracting Parties by
 deprivation of liberty the maximum of which shall not
 be less than one year.

28 Treaty, art. 2(1). The Appendix to the Treaty lists the

1 following two offenses:

- 2 1. Murder or manslaughter; abortion
2 2. Malicious wounding or injury.
3

4 Article 213 of the Jalisco Penal Code provides the following
5 with respect to homicide offenses:

6 An imprisonment penalty from twelve to eighteen years
7 shall be imposed upon whoever kills another person, but
8 in case of an aggravated homicide the imprisonment
penalty imposed shall be from twenty to thirty-five
years.

9 Doc. Evid., Ex. 16 at 123.⁴ Article 206 of the Jalisco Penal
10 Code states the following with respect to bodily injury (battery)
11 offenses:

12 A person commits the crime of injuries when he causes
any harm to another's health.
13

14 Id. at 122. Article 207 of the Jalisco Penal Code provides:

15 Whoever is responsible for the crime of injuries that
do not endanger life, shall be imposed:
16

17 . . .

18 An imprisonment penalty from three months to two years,
whenever the injuries take more than fifteen days to
heal.
19

20 Id.⁵ Therefore, both of the alleged offenses are specifically
21 set forth as extraditable crimes in the Treaty Appendix and are
22 punishable by a maximum imprisonment of not less than one year,
23 as required by Article 2 of the Treaty.
24

25 ⁴For ease of reference, the Court's citations to the Documentary
Evidence refer to the copies of said evidence attached to Respondent's
Brief as Exhibit A, as these copies are labeled with consecutive page
numbers.
26

27 ⁵According to the Qualificative Medical-Legal Report regarding
Sevillano's injuries, the wounds inflicted upon Sevillano required
more than fifteen days to heal. Doc. Evid., Ex. 4.

Article 2(1) of the Treaty also contains a dual criminality requirement. Under the principle of dual criminality, "no offense is extraditable unless it is criminal in both jurisdictions." Caplan v. Vokes, 649 F.2d 1336, 1343 (9th Cir. 1981) (citing Collins v. Loisel, 259 U.S. 309, 312 (1922)). "It is well established that all the principle of dual criminality requires is that the particular acts alleged constitute a crime in both jurisdictions." Emami v. United States District Court, 834 F.2d 1444, 1450 (9th Cir. 1987). "The name by which the crime is described in the two countries need not be the same, nor need the scope of the liability for the crimes be either coextensive or the same in both countries." Id. (citations omitted). Instead, "dual criminality exists if the 'essential character' of the acts criminalized by the law of each country are the same and if the laws are 'substantially analogous.'" Theron v. United States Marshal, 832 F.2d 492, 496 (9th Cir. 1987), abrogated on other grounds by United States v. Wells, 519 U.S. 482 (1997). In assessing dual criminality, the extradition magistrate judge may consider, in order of preference, similar criminal provisions of federal law, similar laws of the state in which the fugitive was found, and the law of the preponderance of the states. Id.

Both of the crimes charged against Crotte are violations of United States and California state law. See, e.g., 18 U.S.C. § 1111 (murder); 18 U.S.C. § 1112 (manslaughter); Cal. Penal Code §§ 187 (murder defined), 189 (degrees of murder) & 192 (manslaughter); Cal. Penal Code §§ 242 (battery) & 243 (punishment for battery). Because the alleged conduct is

1 criminal in both the United States and Mexico, the principle of
 2 dual criminality is satisfied.

3 Accordingly, the crimes charged constitute extraditable
 4 offenses pursuant to Article 2 of the Treaty. The Court must
 5 next examine Crotte's contention that extradition is barred by
 6 the statute of limitations.

7 1. Statute of Limitations

8 Article 7 of the Treaty provides the following with respect
 9 to "Lapse of Time":

10 Extradition shall not be granted when the prosecution
 11 or the enforcement of the penalty for the offense for
 12 which extradition has been sought has become barred by
 lapse of time according to the laws of the requesting
 or requested Party.

13 Treaty, art. 7. Therefore, the Court must determine whether the
 14 criminal prosecution against Crotte is barred by the statute of
 15 limitations of either Mexico or the United States.

16 a. Statute of Limitations Under Mexican Law

17 i. Homicide Charge

18 Crotte concedes that the statute of limitations for the
 19 homicide charge has not run under Mexican law. Tr., 2:21-3:3.⁶

20 ii. Battery Charge

21 Crotte argues that the statute of limitations has run under
 22 Mexican law with respect to the second charge of battery. He

23

24

25 ⁶Under Article 81 of the Jalisco Penal Code, the statute of
 26 limitations for a criminal action is equivalent to the "mathematical
 27 mean of the minimum and maximum imprisonment penalty which corresponds
 28 to the crime" plus "a fourth part more than such term." Doc. Evid.,
 Ex. 16. The imprisonment penalty under Article 213 of the Jalisco
 Penal Code for a homicide charge is twelve to eighteen years. Id.
 Thus, according to the Court's calculations, the statute of
 limitations for the homicide charge in Mexico is 18 years, 9 months.

cites Articles 81, 82 and 85 of the Jalisco Penal Code⁷ for the proposition that the statute of limitations for this charge is, at most, 3 years and 3 months, that the statute of limitations began to run on the date of the incident, i.e., June 26, 1999, and that the running of the statute of limitations is interrupted only upon arrest of the defendant. Crotte was arrested in late December 2006; therefore, far more than 3 years and 3 months passed between the alleged incident, June 26, 1999, and Crotte's arrest. See Resp't.'s Br. at 11-13; Doc. Evid., Ex. 16.

The Government, in its papers, argues that prosecution of the battery charge is not barred by the statute of limitations under Mexican law, and states that the Court may rely upon Mexico's proclamation that the arrest warrant is valid. Gov't.'s

⁷Articles 81, 82 and 85 of the Jalisco Penal Code, pertaining to "Statute of Limitations of the Criminal Action," provide (as translated):

Article 81. The statute of limitations terms for of the criminal action shall be continuous and shall begin to run, from the moment in which the crime was perpetrated, if the crime is instantaneous; from the date the conduct ceased to be criminal, if the crime is a permanent crime, from the day the last criminal act was perpetrated; if it is a continuous crime; and from the day the last criminal act of a serial crime was carried out, and from the date the last act of preparation took place, if it is a crime of attempt.

Article 82. The criminal action shall be prescribe in a term which is equal to mathematical mean of the minimum and maximum imprisonment penalty which corresponds to the crime; the statute of limitations shall be increased in a fourth part more than such term, if it is penalized by a fine, statute of limitations shall prescribe in six months if it is penalized by dismissal or suspension of rights, the statute of limitations shall be concluded in one year.

Article 85. The statute of limitations of the criminal action shall never be less than three years, three months, and it shall only be interrupted by the arrest of the defendant.

Doc. Evid., Ex. 16.

1 Reply to Resp. & Opp'n [Doc. No. 20] (hereafter "Gov't.'s
 2 Reply"), 2-4; Gov.'t.'s Amended Reply to Resp. & Opp'n [Doc. No.
 3 24] (hereafter "Gov't.'s Am. Reply"), 2-5. The Court disagrees.
 4 The Court is clearly required to conduct an independent analysis
 5 of the appropriate statute of limitations when considering a
 6 request for extradition. See Treaty, art. 7; Extradition of
 7 Suarez-Mason, 694 F.Supp. 676, 686 (N.D. Cal. 1988).
 8 Furthermore, Mexico has only set forth its findings with respect
 9 to the application of the Mexican statute of limitations for the
 10 homicide charge. Mexico's documents provide no information in
 11 this regard as to the battery charge. See Doc. Evid., Ex. 15 &
 12 Gov't.'s Am. Reply, Ex. A (both containing Mexico's analysis of
 13 the statute of limitations under the Jalisco Penal Code for the
 14 homicide charge, but not the battery charge).

15 At any rate, the Government conceded at the extradition
 16 hearing that prosecution of the battery charge is barred by the
 17 language of Article 85 of the Jalisco Penal Code. Tr., 7:6-9:19.
 18 The Court's reading of Article 85 leads to the same result. The
 19 Court accordingly finds that prosecution of the battery charge is
 20 barred by the statute of limitations under Mexican law. Crotte
 21 therefore cannot be extradited to Mexico for prosecution of this
 22 charge.

23 b. Statute of Limitations Under United States Law

24 Crotte also argues that the statute of limitations has run
 25 as to both charges under United States law.⁸ Crotte contends
 26

27 ⁸In view of its finding that Crotte cannot be extradited for
 28 prosecution of the battery charge, the Court shall consider whether
 the statute of limitations has run under United States law as to the
 homicide charge only.

1 that 18 U.S.C. § 3282, which provides the federal statute of
 2 limitations for non-capital offenses, applies. Section 3282
 3 provides in relevant part:

4 Except as otherwise expressly provided by law, no
 5 person shall be prosecuted, tried, or punished for any
 6 offense, not capital, unless the indictment is found or
 7 the information is instituted within five years next
 8 after such offense shall have been committed.

9 18 U.S.C. § 3282(a). Crotte asserts that the arrest warrant
 10 issued in Mexico on November 5, 1999 did not toll the statute of
 11 limitations because it does not constitute an indictment or
 12 information within the meaning of § 3282(a). Resp't.'s Br. at
 13 16-17 & 19-22. He thus argues that the statute of limitations
 14 ran five years after the homicide was allegedly committed, i.e.,
 15 on June 26, 2004. *Id.* at 17.

16 i. Determination of Applicable Statute of
 17 Limitations

18 As an initial matter, the Court must determine which statute
 19 of limitations under United States law applies to the Mexican
 20 homicide charge. To do so, the Court must look to the
 21 substantive offense under United States law which is most closely
 22 analogous to the charged offense, and apply the statute of
 23 limitations applicable to that offense. Extradition of Suarez-
Mason, 694 F.Supp. at 686. Here, the homicide charge in Mexico
 24 is most analogous to the federal crimes set forth at 18 U.S.C. §
 1111 (murder)⁹ and 18 U.S.C. § 1112 (manslaughter)¹⁰.

25 ⁹18 U.S.C. § 1111 provides in relevant part:
 26

27 Murder is the unlawful killing of a human being with malice
 28 aforethought. Every murder perpetrated by poison, lying in
 wait, or any other kind of willful, deliberate, malicious,
 and premeditated killing; or committed in the perpetration
 of, or attempt to perpetrate, any arson, escape, murder,

1 There is Ninth Circuit authority which provides that "for
 2 purposes of international extradition from the United States,
 3 murder is a capital offense falling under 18 U.S.C. § 3281 rather
 4 than 18 U.S.C. § 3282." Extradition of Kraiselburd, 786 F.2d
 5 1395, 1398 (9th Cir. 1986), citing Quinn v. Robinson, 783 F.2d
 6 776 (9th Cir. 1986). Under § 3281, no statute of limitations
 7 applies to capital offenses, defined as "any offense punishable
 8 by death." 18 U.S.C. § 3281. Notwithstanding this authority,
 9 the Government does not contend that the charge against Crotte is
 10 a capital one for which no statute of limitations under United
 11 States law should apply. Although not entirely clear, it appears

12 kidnapping, treason, espionage, sabotage, aggravated sexual
 13 abuse or sexual abuse, burglary, or robbery; or perpetrated
 14 from a premeditated design unlawfully and maliciously to
 15 effect the death of any human being other than him who is
 16 killed, is murder in the first degree.

17 Any other murder is murder in the second degree.

18 18 U.S.C. 1111(a).

19 ¹⁰18 U.S.C. § 1112 provides in relevant part:

20 Manslaughter is the unlawful killing of a human being
 21 without malice. It is of two kinds:

22 Voluntary—Upon a sudden quarrel or heat of passion.

23 Involuntary—in the commission of an unlawful act not
 24 amounting to a felony, or in the commission in an unlawful
 25 manner, or without due caution and circumspection, of a
 26 lawful act which might produce death.

27 . . .

28 Whoever is guilty of voluntary manslaughter, shall be fined
 29 under this title or imprisoned not more than ten years, or
 30 both;

31 Whoever is guilty of involuntary manslaughter, shall be
 32 fined under this title or imprisoned not more than six
 33 years, or both.

34 18 U.S.C. § 1112(a)-(b).

1 that the Government likewise contends that the five year statute
2 of limitations under § 3282 applies. See Gov't.'s Reply at 3
3 (referring to five year statute of limitations period).

4 When determining the analogous United States offense for
5 extradition purposes, the primary focus should be on the nature
6 of the conduct charged. Clarey v. Gregg, 138 F.3d 764, 766-77
7 (9th Cir. 1998). Although Crotte's alleged conduct could
8 possibly be characterized as first degree murder - a capital
9 crime not subject to a statute of limitations - the evidence
10 submitted by Mexico more strongly resembles second degree murder
11 or manslaughter, which are non-capital offenses. Accordingly,
12 the Court declines to apply Kraiselburg and instead finds that
13 the five year statute of limitations in 18 U.S.C. § 3282 is
14 applicable to the homicide charge against Crotte.

15 ii. Analysis

16 The Court must next determine whether prosecution of the
17 homicide charge is barred by the five year statute of limitations
18 set forth in § 3282. Again, the Government contends that the
19 issuance of the arrest warrant in Mexico in 1999 was sufficient
20 to satisfy the five year statute, while Crotte argues that the
21 arrest warrant did not toll the statute of limitations because it
22 does not constitute an indictment or information.

23 Although the Ninth Circuit has not squarely addressed the
24 issue, it can be inferred from various decisions that the
25 appropriate measure when considering whether charges are barred
26 by the five year statute of limitations in 18 U.S.C. § 3282 is
27 the length of time between when the alleged criminal act occurred
28 and when foreign charges were filed. In other words, in order to

fall within the statute of limitations, the accusatory instrument must be filed within five years of the commission of the crime. In Caplan, for example, the Ninth Circuit stated that § 3282 "bars most non-capital prosecutions where charges have not been brought within five years." Caplan, 649 F.2d at 1340 (emphasis added). The court subsequently found that "[m]easuring from the date of the London arrest warrant, May 18, 1978, we are concerned under this inquiry with charges involving acts prior to May 18, 1973." Id. In Theron, the Ninth Circuit determined that a 1981 indictment in South Africa had been filed within the federal five year statute of limitations because it expressly incorporated charges from a 1979 South African indictment which had been issued within five years of the alleged offense. Theron, 832 F.2d at 499-500; see also Extradition of Suarez-Mason, 694 F.Supp. at 687 (finding extradition for kidnapping offenses to be time-barred by the statute of limitations under § 3282 because offenses allegedly occurred in January 1979 and charges in Argentina were not filed until December 1984, over five years later); Jhirad v. Ferrandina, 486 F.2d 442, 443 (2d Cir. 1973) (Jhirad I) (analyzing period between the date alleged offenses occurred and the date charges were brought by government of India for statute of limitations purposes); Restatement (Third) of Foreign Relations Law § 476 cmt. e (1987) ("For purposes of applying statutes of limitation to requests for extradition . . . the period is generally calculated from the time of the alleged commission of the offense to the time of the warrant, arrest, indictment, or similar step in the requesting state, or of the filing of the request for extradition, whichever occurs first.")

1 Here, the homicide allegedly occurred on June 26, 1999 and
2 the Mexican arrest warrant -- the charging instrument under
3 Mexican legal procedure -- was issued on November 5, 1999.
4 Applying the above principles, the Mexican prosecution was timely
5 commenced under the applicable United States statute of
6 limitations. Although Crotte contends that the courts in the
7 above cases simply made assumptions about whether a foreign
8 proceeding tolls the statute of limitations, and that such
9 assumptions are merely dicta (see Resp't.'s Br. at 19 n.19), it
10 is important to note that Crotte does not provide any authority
11 supporting his argument that the Mexican arrest warrant did not
12 toll the statute. The Court finds the authorities discussed
13 above to be persuasive in stating that the proper calculation in
14 applying the United States statute of limitations is from the
15 date of the alleged offense to the date on which charges were
16 instituted under the legal procedure of the requesting state.

17 Additionally, a component of Crotte's argument is that the
18 Mexican arrest warrant did not toll the statute of limitations
19 because it does not constitute an "indictment" or "information,"
20 as those terms are used in § 3282. In essence, then, Crotte asks
21 this Court to apply the U.S. statute of limitations, which
22 incorporates indictments, informations and common law concepts,
23 to the Mexican judicial system, in which these concepts are
24 unknown. The Ninth Circuit, however, has expressly stated that
25 "[I]t is inappropriate to engage in . . . an inquiry into the
26 formal procedure a country uses in instituting prosecution."
27 Theron, 832 F.2d at 499-500 (citing Matter of Assarsson, 635 F.2d
28 1237, 1244 (7th Cir. 1980)); see also Emami, 834 F.2d at 1449

1 ("We refrain from interpreting the requirements of German
 2 criminal procedure both out of respect for German sovereignty and
 3 because we recognize the chance of erroneous interpretation is
 4 much greater when we try to construe the law of a country whose
 5 legal system is not based on common law principles.") In any
 6 event, a finding that the Mexican arrest warrant is the
 7 equivalent of an indictment for statute of limitations purposes
 8 is consistent with results in other cases which have accepted the
 9 foreign authority's arrest warrant as the charging instrument
 10 equivalent to an indictment. See, e.g., Caplan, 649 F.2d at
 11 1340; Jhirad I, 486 F.2d at 443; Jhirad v. Ferrandina, 536 F.2d
 12 478, 480 (2d Cir. 1976) (Jhirad II) (describing India's foreign
 13 charging document as the "functional equivalent" of a U.S.
 14 indictment).

15 Therefore, for all of the foregoing reasons, the Court finds
 16 that prosecution of the homicide charge is not barred under the
 17 applicable United States statute of limitations.¹¹

18 2. Article 14 of the Treaty

19 Crotte argues that because the Mexican statute of
 20

21 ¹¹In view of this finding, it is not necessary for the Court to
 22 determine whether the statute of limitations was tolled by the
 23 fugitive provision set forth at 18 U.S.C. § 3290, which provides that
 24 "[n]o statute of limitations shall extend to any person fleeing from
 25 justice." Nonetheless, the Court observes that "[i]n order to prove
 26 flight under § 3290, the government must show by a preponderance of
 27 the evidence that [Respondent] acted with an intent to avoid
 28 prosecution." United States v. Fowlie, 24 F.3d 1070, 1072 (9th Cir.
 1994). The Government, which devotes only one short paragraph to the
 issue (see Gov't.'s Reply at 6), has not made the requisite showing.
 "Fleeing from justice" requires a "volitional act" coupled with
 intent. Fowlie, 24 F.3d at 1072 (citing United States v. Wazney, 529
 F.2d 1287, 1289 (9th Cir. 1976)). The Government has provided no
 information which would permit the Court to even analyze the issue,
 let alone conclude that Crotte was fleeing from justice within the
 meaning of § 3290.

1 limitations has run on the second charge of battery, thus barring
 2 his extradition for that charge, Article 14 of the Treaty
 3 prohibits his extradition for the first charge of homicide. See
 4 Resp't.'s Br. at 13-15. Article 14 ("Decision and Surrender")
 5 provides in relevant part:

- 6 1.-The requested Party shall promptly communicate to
 the requesting Party its decision on the request for
 7 extradition.
- 8 2.-In the case of complete or partial rejection of a
 request for extradition, the requested Party shall give
 9 the reasons on which it was based.
- 10 3.-If the extradition is granted, the surrender of the
 person sought shall take place within such time as may
 11 be prescribed by the laws of the requested Party. The
 competent authorities of the Contracting Parties shall
 12 agree on the date and place of the surrender of the
 person sought.

13
 14 Treaty, art. 14.

15 Crotte contends that subsection 2 of Article 14 sets forth
 16 in full the requested party's obligations in the event of a
 17 "partial rejection" of a request for extradition, and reasons
 18 that such obligations do not include "surrender of the person
 19 sought." Rather, "surrender of the person sought" is only
 20 permitted pursuant to subsection 3, which applies only if the
 21 "extradition is granted." Resp't.'s Br. at 14. In other words,
 22 Crotte argues that "surrender of the person sought" is allowed
 23 only upon a "complete grant of extradition on all bases submitted
 24 by the requesting party." Id. At the extradition hearing,
 25 Crotte confirmed that it is his view that under the Treaty, there
 26 cannot be an extradition on less than the full number of crimes
 27 for which an extradition is sought, as extradition is premised on
 28 the ability to surrender. Tr., 10:5-12. In other words, Crotte

1 believes the Court must find extraditability as to all charges or
2 it cannot extradite on any charges. Id., 10:16-18.

3 Crotte has provided no authority supporting this
4 interpretation of Article 14, and the Court finds that his
5 interpretation is at odds with the plain language and meaning of
6 this Article. Subsection 2 of Article 14 simply states that in
7 the event of a complete or partial rejection of a request for
8 extradition, the *reasons* on which it is based must be given; it
9 does not address the surrender of the person sought to be
10 extradited, which is the subject of subsection 3, and does not
11 set forth in full the requested party's obligations upon a
12 "partial rejection" (i.e., "partial grant") of a request for
13 extradition. Moreover, subsection 3 does not state that the
14 person sought to be extradited can only be surrendered upon a
15 *complete* grant of extradition on all bases urged by the
16 requesting party. Instead, this subsection only states that
17 surrender shall take place within such time as is prescribed by
18 the laws of the requested party "[i]f the extradition is
19 granted." Clearly, if the drafters of the Treaty intended to
20 provide that the person sought to be extradited could *only* be
21 surrendered in the event of a *complete* grant of extradition on
22 all requested bases, they would have said so.

23 Crotte's interpretation of Article 14 is not only
24 unsupported by the plain language of the article, but violates
25 the principle that "[E]xtradition treaties are to be liberally
26 construed so as to effect their purpose, that is, to surrender
27 fugitives for trial for their alleged offenses." Valentine, 289
28 U.S. at 14. Furthermore, as discussed below, Article 17 of the

1 Treaty supports the view that extradition is proper where some,
2 but not all, bases for an extradition request are granted.

3 3. Article 17 of the Treaty

4 Crotte contends that pursuant to Article 17 of the Treaty,
5 "Rule of Speciality," Mexico must guarantee that Crotte will not
6 be prosecuted for an offense other than that for which
7 extradition has been granted. Resp't.'s Br. at 15. He states
8 that absent such a guarantee, Crotte should not be extradited for
9 those offenses which are not time-barred. Id. at 15-16. As with
10 the above argument, he does not cite any case authority for this
11 proposition.

12 Article 17 of the Treaty provides in relevant part:

13 A person extradited under the present Treaty shall not
14 be detained, tried or punished in the territory of the
15 requesting Party for an offense other than that for
16 which extradition has been granted

17 Treaty, art. 17. The Government counters that both the United
18 States and Mexico are bound by the explicit speciality provisions
19 in the treaty, and that no additional assurances are needed.
Gov't.'s Reply at 8.

20 The Court agrees with the Government. Article 17 means what
21 it says, and there is no separate requirement that Mexico
22 acknowledge that it has to do something that it clearly already
23 must do pursuant to the terms of Article 17. Crotte has
24 presented no reason or authority for this Court to require that
25 Mexico provide a "guarantee," above and beyond the provisions of
26 Article 17, that Crotte will not be prosecuted for an offense
27 other than that for which extradition is granted. Moreover, the
28 language of Article 17 demonstrates that the Court is to make

1 findings as to each charge, and further, necessarily assumes that
 2 the Court can extradite as to some charges but not others. Thus,
 3 Article 17 supports the view that there *can* be an extradition on
 4 less than the full number of crimes for which extradition is
 5 sought, contrary to Crotte's argument discussed above. As the
 6 Ninth Circuit stated in *Theron*,

7 The principle of speciality . . . requires [the court
 8 to] examine each charge . . . to ensure that the
 9 charges are not time-barred because the requesting
 10 country can only prosecute those offenses that the
 asylum country has found extraditable. [Citation
 omitted.] If a charge is barred by the statute of
 limitations, then a defendant is not extraditable *on*
 11 *that charge*.

12 *Theron*, 832 F.2d at 498 (emphasis added).

13 B. Probable Cause

14 The central function of the extradition magistrate judge is
 15 to determine whether there is competent evidence to justify
 16 holding the accused to await trial in the requesting state, and
 17 not to determine whether the evidence is sufficient to justify a
 18 conviction. *Collins*, 259 U.S. at 316; see also *United States v.*
 19 *Wiebe*, 733 F.2d 549, 553 (8th Cir. 1984) ("The extradition
 20 hearing is not a trial on the merits to determine guilt or
 21 innocence, but serves as a means of ensuring that probable cause
 22 exists to believe the person whose surrender is sought has
 23 committed the crime for which his extradition is requested.");
 24 *Hooker v. Klein*, 573 F.2d 1360, 1367 (9th Cir. 1978). "The
 25 probable cause standard applicable in extradition proceedings is
 26 defined in accordance with federal law and has been described as
 27 'evidence sufficient to cause a person of ordinary prudence and
 28 caution to conscientiously entertain a reasonable belief of the

1 accused's guilt.'" Wiebe, 733 F.2d at 553 (citation omitted).
 2 The judicial officer who conducts an extradition hearing "thus
 3 performs an assignment in line with his or her accustomed task of
 4 determining if there is probable cause to hold a defendant to
 5 answer for the commission of an offense." Lo Doca v. United
 6 States, 93 F.3d 1100, 1104 (2nd Cir. 1996).

7 1. Admissibility of Evidence

8 The admissibility of evidence in extradition matters is
 9 controlled by 18 U.S.C. § 3190, which provides as follows:

10 Depositions, warrants, or other papers or copies
 11 thereof offered in evidence upon the hearing of any
 12 extradition case shall be received and admitted as
 13 evidence on such hearing for all purposes of such
 14 hearing if they shall be properly and legally
 15 authenticated so as to entitle them to be received for
 16 similar purposes by the tribunals of the foreign
 country from which the accused party shall have
 escaped, and the certificate of the principal
 diplomatic or consular officer of the United States
 resident in such foreign country shall be proof that
 the same, so offered, are authenticated in the manner
 required.

17 18 U.S.C. § 3190; Escobedo v. United States, 623 F.2d 1098, 1103
 18 (5th Cir. 1980) (stating that section 3190, not state law,
 19 controls admissibility). "[A]uthentication is the only
 20 requirement for admissibility of evidence under general United
 21 States extradition law. Oen Yin-Choy v. Robinson, 858 F.2d 1400,
 22 1406 (9th Cir. 1988); see also Zanazanian v. United States, 729
 23 F.2d 624, 627 (9th Cir. 1984).

24 The documents submitted in this case were properly
 25 authenticated, and Respondent has not presented any argument or
 26 evidence to the contrary. As long as there is no conflict with
 27 the provisions of the subject treaty, evidence that has been
 28 authenticated is admissible in extradition proceedings. Emami,

1 834 F.2d at 1451. Article 10 of the Treaty addresses the
2 admissibility of documents in evidence:

3 The documents which, according to this Article, shall
4 accompany the request for extradition, shall be
received in evidence when:

5

6 b) In the case of a request emanating from the United
7 Mexican States, they are certified by the principle
[sic] diplomatic or consular officer of the United
States in Mexico.

8
9 Treaty, art. 10(6). Here, Mexico's request for extradition and
10 supporting documents comply with this requirement, as the
11 documents were properly certified by the principal consular
12 officer of the United States in Mexico. Therefore, under the
13 general extradition law of the United States and the provisions
14 of the Treaty, all of the documents submitted are admissible for
15 purposes of this extradition proceeding.

16 The Supreme Court has found that extradition may be
17 predicated entirely on the "unsworn statements of absent
18 witnesses." Collins, 259 U.S. at 317. Indeed, both sworn and
19 unsworn statements contained in properly authenticated documents
20 are permissible. Artukovic v. Rison, 784 F.2d 1354, 1356 (9th
21 Cir. 1986). Additionally, hearsay evidence is permitted in
22 extradition proceedings. Escobedo, 623 F.2d at 1102 n.10; Sayne
23 v. Shipley, 418 F.2d 679, 685 (5th Cir. 1969). This includes
24 multiple hearsay. See Escobedo, 623 F.2d at 1102 (permitting
25 written third-party account of deposition testimony); Zanazanian,
26 729 F.2d at 627 (permitting police report describing a witness
27 statement).

28 //

1 2. Probable Cause: Homicide Charge2 a. Summary of Evidence

3 Crotte is accused of the homicide of Daniel Sandoval Abundis
4 on June 26, 1999. According to the documentary evidence
5 submitted in support of the extradition request, on June 24,
6 1999, two days before the alleged incident, Sevillano (the
7 alleged battery victim), was standing outside his house at 9:00
8 p.m. with a friend, Fernando, when another friend, Martin (known
9 as "El Martin") arrived in his car with two other friends. Doc.
10 Evid., Ex. 12 (statement by Sevillano dated Sept. 2, 1999) at 47-
11 48. Martin told Sevillano and Fernando that "Dany" (Sandoval)
12 was being "beaten by the band 'Los Tejones'." Id. at 48.
13 Everyone agreed to go and help out Sandoval, and they got into
14 Martin's car. Martin drove to the corner of Cuauhtemoc and
15 another street, where Sevillano saw that "Los Tejones" were
16 beating up his friends Sandoval, Desiderio (known as "El Desi"),
17 and Martin (known as "El Bulbo"). Id. "Los Tejones" were
18 comprised of Saul, his brother "El Tejon," David and Rigoberto
19 (who are brothers), and "Aldo" (Crotte). Id. Sevillano and his
20 four friends got out of their car. The members of Los Tejones
21 went back toward Aldo's car, described as a white station wagon-
22 like Chevrolet, and got in. Id. Crotte put his left hand out of
23 the car and Sevillano saw that he was holding a gun "that looked
24 like a revolver." Id. Crotte shot the gun four or five times
25 toward Sevillano and his friends, but did not injure anybody.
26 Crotte then drove his car away and went with his friends to the
27 "chapel." Id. Sevillano and his friends returned home. Id.
28 The following day, on June 25, 1999 at 10:00 p.m.,

1 Sevillano, Sandoval, and four others were drinking beer outside
 2 "El Roger's" house when they all agreed to go the next day "to
 3 fuck Los Tejones to avenge" the beating the previous day. They
 4 agreed to meet at Roger's house the following day at 9:00 p.m.
 5 Id.; see also Doc. Evid., Ex. 13 (summary of statement by Rogelio
 6 Rios Martinez) at 63.

7 On June 26, 1999 around 9:00 p.m., Sevillano, his brother
 8 Juan, Sandoval, "El Roger," "El Rata," "El Bulbo," and others,
 9 totaling about twenty people, gathered at Roger's house. Doc.
 10 Evid., Ex. 12 at 48-49. According to Sevillano, "We started to
 11 talk about going to the place where Los Tejones were and once we
 12 all agreed; we left walking without carrying any sticks, stones,
 13 pipes or any other kind of weapon." Id. at 49.¹²

14 There are multiple accounts of the events which then
 15 transpired. According to Sevillano's signed,¹³ sworn statement
 16 rendered on June 27, 1999 at 1:30 a.m., within hours after the
 17 alleged incident:

18 [W]e were walking along Calle La Milpa in Colonia el
 19 Vigia, because we were going to fight some guys named
 20 "Los Tejones" because we were going to defend my friend
 21 Daniel, since he told us two days earlier they had been
 22 bothering him and I want to mention that I know these
 23 guys "Los Tejones" because they live a few blocks from
 24 my house and we directly arrived to the house of three
 25 of those individuals, which is located in Calle Milpa;
 those three who live in the house where we arrived are
 Rigo and David, who are brothers and whose surnames I
 ignore, and Aldo Omar [Crotte], and when we arrived to
 that house we yelled at them "come out bastards," and
 in that moment the two brothers Rigo and David came
 out, as well as Aldo Omar [Crotte], and I saw he was

26 ¹²As will be discussed further below, there is evidence which
 27 contradicts the latter half of this statement.

28 ¹³Sevillano "signed" this statement with a fingerprint as he was
 unable to sign his name due to injuries sustained in the subject
 incident.

1 holding a gun with his hand, and shoot at Daniel and
 2 me, who were walking ahead, as well as at the rest of
 3 my friends, and suddenly I felt my right hand wounded,
 4 and the left side of my chest was hurting bad, so we
 5 ran around the corner and my friend[s] Cain Juan and
 6 Juanito Alcala arrived in a car which I boarded so they
 7 brought me to the Green Cross [medical center], and I
 8 want to mention that before they brought me to the
 9 Green Cross, that is when I still was at the place
 10 where the facts took place, I saw that my friend Daniel
 11 fell to the ground, and therein my friends kicked
 12 Aldo's car and threw stones at the house.
 13

14 Doc. Evid., Ex. 6 at 23; see also Doc. Evid., Ex. 1 (Ministerial
 15 Attestation by Public Prosecutor Romero of June 26, 1999
 16 including a summary of a statement given by Sevillano at the
 17 emergency room). A couple of months later, on September 2, 1999,
 18 Sevillano provided another signed statement which was given under
 19 penalty of perjury. This statement described the events of June
 20 26, 1999 as follows:

21 Once we were walking we got to the corner of De La
 22 Milpa street. The first to get there were my friend El
 23 Dany and I the rest of my friends were behind, the
 24 house of brothers David and Rigoberto is on that
 25 corner, their house is in front of a temple or chapel,
 26 so when El Dany and I were outside the brothers' house
 27 in which Aldo also lives, we started to yell at them
 "come out assholes to kick your ass" we did it several
 28 times so Aldo went out holding the same weapon that he
 had used to shoot at us previously as I stated before.
 When Aldo went out he ran towards us aiming his gun at
 us, so Dany and me were going back, it was at that
 moment that he started shooting at us as the brothers
 David and Rigoberto were going out too. When Aldo was
 shooting us I felt my right hand injured and at the
 same time I felt my chest right under my left nipple
 injured too. I felt that I was wounded and fell to the
 ground as I was going back, since Aldo was shooting us
 as we were retreating. When I was on the ground I
 didn't see where my friend Dany had gone because I was
 a bit unconscious and dizzy, but I felt that I was
 being dragged by my shoulders. I got better after a
 while and then I noticed that my friends were carrying
 my friend Dany and left him laying on his back, so I
 went towards Dany and noticed that there was a hole on
 his shirt around the left part of his chest.

29 Doc. Evid., Ex. 12 at 49.

1 Jose Antonio Nava Valadez, who was part of Sandoval and
 2 Sevillano's group, provided the following signed and sworn
 3 statement on June 26, 1999 at 11:30 p.m., just hours after the
 4 shooting:

5 [W]hen we were getting to the chapel, some of my
 6 friends started yelling fucking stuff like "hey you
 7 whiners, get out of your house, mother fuckers," and
 8 then a guy came out of his house, and started shooting
 9 towards where we were with his gun, and when we heard
 10 the shooting, we ran back, and ran like half a block,
 11 and when this guy stopped shooting, he went back into
 his house, so then we saw my friend Daniel lying on the
 ground . . . I want to state that I didn't know how
 many times that guy shot, but he did it several times,
 and that guy who shot, was short, had black hair, Van
 Dyke beard, and he entered a house which is in front of
 the chapel that is in El Vigia.

12 Doc. Evid., Ex. 2 at 9.

13 On June 27, 1999, shortly after midnight, Public Prosecutor
 14 Romero visited the crime scene in Colonia El Vigia, in the
 15 Municipality of Zapopan, Jalisco. There, he observed three
 16 buildings on Calle La Milpa: number 376, a chapel; number 380, a
 17 building; and number 373, a two story house. Numbers 376 and 380
 18 each had orifices which were "seemingly produced by firearm
 19 projectile." Doc. Evid., Ex. 3 at 12. Number 373, which stood
 20 in front of the other two buildings, had two broken windows. Id.
 21 While there, Romero interviewed Maria Luisa Cuevas Dueñas, the
 22 owner of the house, who told him that Crotte had come from the
 23 United States six days before and was renting a room from her.
 24 With respect to the events that had transpired earlier in the
 25 evening, she stated:

26 Aldo had arrived in a white vehicle of his own, and the
 27 individuals damaged the car throwing stones at it and
 28 assaulted him, *for what he took out a gun*, and from the
 corner of Calle La Milpa and Calle El Lazo, *he shot at
 those individuals.*

1 Id. at 13 (emphases added). A couple of weeks later, on July 14,
 2 1999, she rendered the following signed statement under penalty
 3 of perjury:

4 [O]n June 26th . . . on that night at around . . . 9:30
 5 I went to buy bread and milk to the bakery store
 6 located by Calle Cuauhtemoc and La Milpa, along with my
 7 two grand children, Juan Pablo and Susi, of four and
 8 six years of age respectively; suddenly, when I came
 9 out of the bakery store, I saw a group of more than ten
 10 or fifteen boys, who were holding rocks in their hands,
 11 and two of them were holding guns in their hands, all
 12 of them were walking along Calle Cuauhtemoc, and I saw
 13 that they turned by Calle La Milpa, it was then when I
 14 was walking behind them and I saw that those who were
 15 holding rocks started to throw them at my house,
 16 breaking windows while they were yelling "Let's fuck
 17 that sissy," and suddenly they headed to the corner of
 18 La Milpa and Cerrada del Lazo, where out of the temple,
 19 the car of a family friend was parked, he is a person
 20 to whom my husband, my children and I house when he
 comes from San Francisco; and he is named Aldo Omar
 Crotte, I could clearly see so because I was quickly
 going to my house while seeing that they were breaking
 the glasses of my house, that they started break the
 glasses of Aldo's car and he was inside the vehicle
 while they were telling him "Get out sissy, we are
 going to kill you and to fuck you," and they kept
 throwing stones at his car, and suddenly, Aldo came out
 of the vehicle and ran to the house, it was then when I
 heard roaring, as pop of corn, and everybody started
 running all around, and it was then when I arrived
 home, Aldo was coming out, and without saying anything,
 he got into his car and left the place, seemingly
 afraid that those individuals would come back to harm
 him or beat him; at home were my husband Salvador
 Gonzalez Gonzalez and my son Vicente Gonzalez Cuevas.
 . . . The physical description of Aldo Omar Crotte is
 as follows: about 28 years of age, 1.67 meters tall,
 strong build, light brown skin, short brown hair,
 round-shape face, regular forehead, bushy eyebrows,
 light brown hair, regular nose, regular mouth, thin
 lips, he uses moustache, Van Dyke beard . . .

24 Doc. Evid., Ex. 5 at 18-19. Cuevas's second statement does not
 25 include a declaration that Crotte fired a gun, as her first
 26 statement does.

27 Ms. Cuevas's husband, Salvador Gonzalez Gonzalez, provided a
 28 signed, sworn statement on July 14, 1999:

1 That with regard to the facts that took place on
 2 Saturday, June 26th . . . that day at around eight
 3 thirty at night, I was inside my house . . . in my
 4 bedroom, and my son Vicente Gonzalez Cuevas, was in the
 5 upper floor, since my wife Maria Luisa Cuevas Dueñas
 6 had gone out along with my two grand children to buy
 7 milk and bread, suddenly a glass was broken while I was
 8 in my bedroom lying on my bed, and since the glasses
 9 fell on my body, I stuck my head out of the window and
 10 I saw many boys, like fifteen, because I can clearly
 11 see to the street from my window, and among them, there
 12 were two whom I saw at a distance of eight meters, and
 13 they were armed with guns while all of them were
 14 saying, "Let's fuck that sissy," but I could not see .
 15 . . who they were talking about, and I tried to go out
 16 to the street, but I heard noise, like corn popping,
 17 and I stayed inside the house, that is behind the
 entrance door, which was not fully closed, and suddenly
 Aldo, who is a friend of the family for years and lives
 in my house came in running, and without saying a
 thing, he went upstairs to his room and like he came
 in, he went out and I saw that he was boarding his car
 which was parked on the corner of the house, that is
 outside the church, in the enclosed street named El
 Lazo and La Milpa, and he left, the glasses of his car
 broken; I ignore where Aldo had gone, but I want to
 point out that Aldo came into the house running after
 the noise I heard, and all of the boys were running
 randomly, and I could not see where they went; right
 after Aldo left on his car, my wife Maria Luisa arrived
 and she told me what had happened, since she had seen
 when those boys had been throwing stones at the house
 and were threatening Aldo, they had even broken the
 glasses of his car, but we did not know why.

18
 19 Doc. Evid., Ex. 10 at 40-41.

20 Carmen Becerra Guerrero also provided a statement, which was
 21 summarized in the request for the arrest warrant:

22 [T]he day the facts took place being around [9:30 p.m.]
 23 she was buying some corns on the cob and saw a bunch of
 24 boys and girls coming, some of them take out guns from
 little haversacks and started to shoot towards calle
 25 Milpa while yelling "Don't chicken out, don't you have
 any balls, come and get some, I'll stick it up your
 ass," then suddenly these guys began to run while a
 young guy fall to the floor.

1 Doc. Evid., Ex. 13 at 60-61.¹⁴ Vicente Gonzalez Cuevas, the son
 2 of Maria Luisa Cuevas Dueñas and Salvador Gonzalez Gonzalez,
 3 provided a statement which was also summarized in the request for
 4 the arrest warrant:

5 [T]he day [the] facts took place being around [10:00
 6 p.m.], he was sleeping in his house when he heard some
 7 noises coming from the street, so he stood up and stuck
 8 his head out of the window seeing there were around 25
 9 guys who were throwing stones at his house and yelling
 10 "Get out you motherfuckers, this time we are going to
 kill you." [T]hree of them were carrying guns, so he
 went back and saw how they broke the glass of the
 window, then he heard several explosions made by a
 firearm, then the guys who were attacking started
 retreating

11 Id. at 61.

12 Finally, the request for the issuance of an arrest warrant
 13 contained two summaries of a statement (or statements) rendered
 14 by Rogelio Rios Martinez:

15 [O]n Saturday, June 26th, of the current year, in Calle
 16 San Francisco, Zapopan, [h]e got together with some of
 17 his friends and among them there were Daniel Sandoval
 Abundis, Martin Navarro, Jose Antonio Nava, and others
 whose names and surnames he ignored. They were about
 18 twenty and Daniel told them they were to go to Colonia
 El Vigia to fight some "fucking batos" since they were
 upsetting him, they got to El Vigia without knowing the
 exact place but it was near a chapel, since they saw
 nobody they were going back, when they had walked a few
 20 meters they heard gunshots so all of them ran like half
 a block towards Avenida Hidalgo, when they heard no
 more gunshots they went back to the same place, then he
 21 heard other gunshots, without knowing either how many
 they were or who had shot, then he saw his friend
 22 Daniel falling down

23
 24 Doc. Evid., Ex. 13 at 53. The second summary provides:

25 [W]hen they got to the corner of calle La Milpa they
 26 saw three guys who were members of the band Los Tejones

27 ¹⁴As Crotte observes (see Resp't.'s Br. at 5 n.6), the documentary
 28 evidence submitted in support of the extradition request does not
 contain a copy of Ms. Becerra's actual statement; rather, only a
 summary of Ms. Becerra's statement is provided.

1 coming out of a house which is in front of the chapel.
 2 One of them was arguing with Dany and Julio Cesar, he
 3 saw that one of them had a gun revolver like using it
 4 to shoot two times at Dany and Julio Cesar and all the
 5 others with them began running back and no more
 shooting was heard, thus they went back to the place
 where the three members of the band were and they saw
 the same guy shooting again at their friends Dany and
 Julio Cesar and at that moment his friends went down to
 the ground.

6
 7 Id. at 63-64.

8 The Court may properly consider all of the above evidence in
 9 its probable cause determination, whether sworn or unsworn, or
 10 whether the evidence consists of an actual statement given by a
 11 witness or a summary thereof. See Artukovic, 784 F.2d at 1356;
 12 Zanazanian, 729 F.2d at 627.

13 b. Discussion

14 The Court finds that Sevillano's statements demonstrate
 15 probable cause that Crotte committed the homicide of Sandoval.
 16 Sevillano definitively identified Crotte as the person who shot
 17 both him and Sandoval. He made this identification within an
 18 hour of the shootings (see Ministerial Attestation, Doc. Evid.,
 19 Ex. 1 at 7), when he gave an official statement to the Public
 20 Prosecutor shortly thereafter (see Doc. Evid., Ex. 6 at 23), and
 21 when he provided a supplemental statement on September 2, 1999
 22 (see id., Ex. 12 at 49). He was able to identify Crotte because
 23 of his familiarity with "Los Tejones," who lived a few blocks
 24 away from him. Id., Ex. 6 at 23; see also Cuevas Statement, Doc.
 25 Evid., Ex. 5 at 19 (describing Sevillano and Sandoval as "persons
 26 whom I know" as they lived in her neighborhood). He was also
 27 familiar with Crotte as a result of the June 24, 1999 encounter
 28 between "Los Tejones" and Sevillano, Sandoval and their friends.

1 Furthermore, Sevillano stated that he recognized the revolver
2 that Crotte pulled out during the shootings of June 26, 1999 as
3 the same weapon he used during the June 24, 1999 incident. Id.,
4 Ex. 12 at 48-49. The Court deems the Ministerial Attestation
5 (Doc. Evid., Ex. 1), which was signed by the Public Prosecutor,
6 and both of Sevillano's signed statements (id., Exs. 6 & 12),
7 which were given under oath or penalty of perjury, to be
8 sufficiently reliable to be deemed competent evidence to
9 establish probable cause that Crotte committed the homicide of
10 Sandoval.

11 In addition, other documentary evidence provides support for
12 Sevillano's statements. Significantly, Maria Luisa Cuevas
13 Dueñas, the owner of the home in which Crotte, a friend of the
14 family, was staying, initially told the Public Prosecutor that
15 Crotte took out a gun and shot at the crowd. Doc. Evid., Ex. 3
16 at 13. Although her later statement -- provided over two weeks
17 after the incident -- does not include this information, her
18 initial statement, which the Court deems more reliable as it was
19 given within three hours of the shooting, provides confirmation
20 that Crotte fired gunshots on the night in question.
21 Additionally, Nava's statement that the "guy" who shot at his
22 friends "went back into his house" (id., Ex. 2 at 9), when
23 considered in conjunction with Salvador Gonzalez Gonzalez's
24 statement that Crotte ran into his house after Gonzalez heard the
25 "corn popping" noise (id., Ex. 10 at 41), provides further
26 support that Crotte fired shots at Sandoval.

27 Crotte argues that probable cause does not exist. None of
28 Crotte's arguments, however, has any merit. For instance, Crotte

1 argues that there is no credible evidence that Crotte was the
 2 person who discharged the firearm that caused Sandoval's
 3 homicide. Resp't.'s Br. at 26. He contends that it is likely
 4 that one of the other two men who the "mob" sought to confront --
 5 David or Rigoberto -- was responsible for the shootings. This
 6 argument, however, ignores the statements by Sevillano, who
 7 definitively identified Crotte as the shooter. See Doc. Evid.,
 8 Ex. 6 at 23; id., Ex. 12 at 49. Despite Sevillano's definitive
 9 identification of Crotte as the shooter in his written
 10 statements, Crotte cites the following summary of Sevillano's
 11 statement contained in the arrest warrant to support his argument
 12 that several individuals, and not simply Crotte, were discharging
 13 firearms in the direction of the mob:

14 David, Rigoberto and Aldo came out and when *they* were
 15 shooting he felt his right arm wounded, as well as his
 chest underneath the left nipple, . . .

16 Resp't.'s Br. at 26, citing Doc. Evid., Ex. 14 at 94 (emphasis
 17 added). Crotte overlooks the fact that the very excerpt from the
 18 arrest warrant on which he relies continues as follows: "so when
 19 they felt himself injured, he fell to the ground while walking
 20 backwards, so *ALDO* shot *DANY* and the deponent when they were
 21 walking back" Doc. Evid., Ex. 14 at 94 (emphasis
 22 added).¹⁵

23
 24 ¹⁵Likewise, only a few lines before the snippet from the arrest
 warrant quoted by Crotte, the following appears:

25 DANY and the deponent were walking towards the corner of
 26 Calle La Milpa, and DAVID and RIGOBERTO were left behind,
 27 but when they were outside the place where ALDO lives, they
 started shouting "come out mother fuckers to give you some
 shit," and after the yelling, *ALDO* came out, and he saw the
 gun again, which was the same with which he had shot them,
 when he came out he shot at *DANY* and the deponent, . . ."

1 Moreover, irrespective of the summary of Sevillano's
 2 statement contained in the arrest warrant, Sevillano's actual
 3 statements unequivocally identify Crotte as the shooter (see Doc.
 4 Evid., Ex. 6 at 23 & Ex. 12 at 49). Additionally, Jose Antonio
 5 Nava Valadez, who was part of Sevillano and Sandoval's group on
 6 the evening in question, described under oath that "a guy" (i.e.,
 7 a single person) was responsible for Sandoval's shooting. Doc.
 8 Evid., Ex. 2 at 9.¹⁶ There is simply no evidence which supports
 9 Crotte's argument that David or Rigoberto committed the shooting
 10 or that all three (Crotte, David and Rigoberto) came out
 11 shooting.

12 Crotte also speculates that it is possible that one of the
 13 "mob's" members was responsible for the shootings as a result of
 14 "friendly fire." Resp't.'s Br. at 26. The Court does agree with
 15 Crotte that there is ample evidence that members of the "mob"
 16 were carrying weapons of their own, including guns. See Cuevas
 17 Statement, Doc. Evid., Ex. 5 at 18; Salvador Gonzalez Gonzalez
 18 Statement, Doc. Evid., Ex. 10 at 41; Becerra Statement, Doc.
 19 Evid., Ex. 13 at 60; Vicente Gonzalez Cuevas Statement, Doc.
 20 Evid., Ex. 13 at 61; see also Doc. Evid., Ex. 13 at 57-58
 21 (describing positive findings by chemistry experts of gunshot
 22 residue on hands of Jose Antonio Nava Valadez and Cain Juan
 23 Eduardo Villanueva Alvarez, who were part of Sevillano's group).

24 Doc. Evid., Ex. 14 at 93-94 (emphasis added); see also id. at 92 "RIGO
 25 and DAVID came out as well as ALDO OMAR CROTTE, who was holding a gun
 26 in his hand, shooting at DANIEL and the deponent" (emphasis added).

27 ¹⁶According to the Public Prosecutor, Rogelio Rios Martinez also
 28 stated that while he saw three members of Los Tejones come out of the
 house, "he saw that one of them had a gun revolver like using it to
 shoot two times at Dany and Julio Cesar . . ." Doc. Evid., Ex. 13
 at 63-64 (emphasis added).

1 However, none of this evidence is sufficient to negate
2 Sevillano's definitive statements that Crotte shot him and
3 Sandoval. And, although the Court acknowledges that this
4 evidence contradicts Sevillano's statement that he and his
5 friends were not carrying any weapons of any kind (see Doc.
6 Evid., Ex. 12 at 49), this, too, is not enough to negate his
7 identification of Crotte as the shooter. The impact, if any,
8 that the above statements may have on Sevillano's credibility can
9 be determined once the case is prosecuted in Mexico. See Bovio
10 v. United States, 989 F.2d 255, 259 (7th Cir. 1993) (stating that
11 extraditee has no right to attack the credibility of witnesses at
12 an extradition hearing, as issues of credibility are to be
13 determined at trial). In short, even though Sevillano's
14 statements are contradicted in part by other witness statements,
15 they still constitute competent evidence of probable cause. See
16 Fernandez v. Phillips, 268 U.S. 311, 312 ("Competent evidence to
17 establish reasonable grounds is not necessarily evidence
18 competent to convict.").

19 Crotte also takes issue with the ballistics evidence
20 contained in the documentary evidence. Resp't.'s Br. at 26 n.23.
21 The bullet extracted from Sandoval's body was found to correspond
22 to a ".22 caliber (Long-Rifle) lead bullet." Doc. Evid., Ex. 12
23 at 59. Crotte appears to contend that such a bullet could not
24 come from the type of weapon Crotte was alleged to have used,
25 i.e., a revolver. Resp't.'s Br. at 26 n.23. Crotte is mistaken.
26 The ballistics report itself says that it was not possible to
27 determine from what kind of gun the bullet came. Doc. Evid., Ex.
28 12 at 59. Thus, the ballistics report describes only the

1 ammunition used, not the weapon from which it was fired.
2 Additionally, "various rifles, pistols, revolvers, and . . .
3 shotguns" have been manufactured in the .22 Long Rifle caliber.
4 See Wikipedia, entry on ".22 long rifle"
5 (http://en.wikipedia.org/wiki/.22_long_rifle) (accessed Jan. 23,
6 2008). Thus, it appears that a .22 Long Rifle bullet could be
7 fired from a revolver or handgun. Therefore, the findings in the
8 ballistics report do not contradict either Sevillano's statements
9 or the Court's probable cause determination.

10 Crotte also observes that none of the persons he describes
11 as percipient witnesses (i.e., those witnesses who were not a
12 part of Sevillano's and Sandoval's group) saw Crotte possess or
13 use a firearm during the events that transpired, despite the fact
14 that several of the witnesses had a "clear and unobstructed view"
15 or "saw the scene from an elevated vantage point." Resp't.'s Br.
16 at 27. Although Crotte does not identify the percipient
17 witnesses to whom he is referring by name, the Court presumes
18 that he is referring to Salvador Gonzalez Gonzalez, who said he
19 could "clearly see to the street" from his window, and Vicente
20 Gonzalez Cuevas, who was located in the upper floor of his house
21 at the time of the incident. Doc. Evid., Ex. 10 at 40-41.
22 Salvador Gonzalez acknowledged in this statement, however, that
23 he "ignore[d] where Aldo had gone." Id. at 41. And, although
24 Salvador Gonzalez noted that Crotte came running into his house
25 after he heard a corn popping noise (id.), this sequence of
26 events is not at all inconsistent with Crotte being the shooter.
27 See, e.g., Id., Ex. 2 at 9 (Nava's statement that "when [the] guy
28 stopped shooting, he went back into his house, so then we saw my

1 friend Daniel lying on the ground"). Additionally, the statement
2 by Vicente Gonzalez contained in the documentary evidence is in
3 summary form only and is very sparse -- indeed, it does not
4 mention Crotte at all. Therefore, this argument has no merit.

5 Crotte further points out various inconsistencies and
6 conflicts within several witness statements and contends that the
7 statements cannot support a finding of probable cause. Resp't.'s
8 Br. at 27-28. In particular, Crotte identifies inconsistencies
9 in the statements given by Sevillano (Doc. Evid., Exs. 6 and 12),
10 Nava (id., Ex. 2 and Ex. 13 at 61) and Rios (id., Ex. 13 at 53 &
11 64). Crotte contends that these witnesses have a motive to lie
12 given their own criminal culpability, as witnesses identified
13 them as the aggressors in the subject incident. Resp't.'s Br. at
14 28. The Court has reviewed the alleged inconsistencies and
15 acknowledges that not all of the statements are identical.
16 Indeed, the inconsistencies demonstrate that the exact sequence
17 of events on the night of June 26, 1999 is in question. However,
18 the inconsistencies are not sufficient to negate the showing of
19 probable cause. Instead, Crotte's contentions raise issues which
20 are appropriate for determination at a full trial in Mexico.
21 "The decisions are emphatic that the extraditee cannot be allowed
22 to turn the extradition hearing into a full trial on the merits."
23 Matter of Sindona, 450 F.Supp. 672, 685 (S.D.N.Y. 1978);
24 see also Quinn, 783 F.2d at 815 ("The magistrate [judge] does not
25 weigh conflicting evidence and make factual determinations but,
26 rather, determines only whether there is competent evidence to
27 support the belief that the accused has committed the charged
28 offense.").

1 Crotte further notes that although the statements of Rogelio
2 Rios Martinez, Magdalena Abundis Ortega, and Oscar Eduardo
3 Sandoval Abundis are set forth in the request for the issuance of
4 the arrest warrant (Ex. 13) and the arrest warrant (Ex. 14), no
5 sworn, written complaints were produced for these witnesses.
6 Crotte likewise contends that the request for the issuance of the
7 arrest warrant relied upon unsworn medical reports and unsworn
8 investigative reports by the Public Prosecutor. Resp't.'s Br. at
9 29. The Treaty, however, does not contain an oath requirement.
10 Compare Extradition of Platko, 213 F.Supp.2d 1229, 1238 (S.D.
11 Cal. 2002) (interpreting U.S. treaty with Czechoslovakia as
12 requiring all statements offered in support of arrest warrant to
13 be made under oath). Because the above evidence was
14 authenticated, it is admissible in this proceeding and it is
15 wholly proper for the Court to consider it in its probable cause
16 determination. Emami, 834 F.2d at 1451. Moreover, an
17 extradition proceeding is not a trial; to require Mexico to
18 produce all of its evidence would defeat the whole object of
19 extradition. Therefore, Crotte's arguments with respect to the
20 above evidence are without merit.

21 Finally, Crotte contends that Mexico failed to present
22 exculpatory evidence to the Court. Resp't.'s Br. at 30-32.
23 Specifically, he states that full and complete sworn, written
24 statements should have been provided for Carmen Becerra Guerrero
25 and Vicente Gonzalez Cuevas, not just summaries of their
26 statements (see Ex. 13 at 60-61). Crotte, however, cites only
27 non-extradition authorities to support his argument. In
28 extradition cases, there is no requirement that exculpatory

1 evidence be produced. Caplan, 649 F.2d at 1342 n.10 ("the
 2 accused has no right to introduce exculpatory evidence and the
 3 government has no duty to do so," citing Charlton v. Kelly, 229
 4 U.S. 447, 456 (1913)). Thus, this argument fails.

5 After thoroughly considering all of the foregoing arguments
 6 and evidence, the Court finds the evidence submitted by Mexico,
 7 through the Government, sufficient to support a finding of
 8 probable cause with respect to the charge of homicide.¹⁷

9 C. Crotte's Other Contentions

10 1. Sixth Amendment Argument

11 Crotte contends that there has been an impermissible post-
 12 indictment delay under the Sixth Amendment because the Mexican
 13 government did not file its formal request for extradition until
 14 March 23, 2007, more than seven years after the issuance of the
 15 November 1999 arrest warrant. Resp't.'s Br. at 24-25. Case
 16 authority makes it clear, however, that there is no Sixth
 17 Amendment right to a speedy trial in extradition cases. See,
 18 e.g., Sabatier v. Dabrowski, 586 F.2d 866, 869 (1st Cir. 1978);
 19 Jhirad II, 536 F.2d at 485 n.9; see also Yapp v. Reno, 26 F.3d
 20 1562, 1568 (11th Cir. 1994) (finding lapse of time provision in
 21 extradition treaty to refer to the running of a statute of
 22 limitations and not to a defendant's Sixth Amendment right to a
 23 speedy trial). Accordingly, the Court finds this argument to be
 24 without merit.

25 //

26
 27 ¹⁷The evidence discussed above also supports a finding of probable
 28 caus as to the battery charge, but as discussed above in Section
 III.A.1.a.ii., *supra*, the applicable Mexican statute of limitations
 has run on that charge.

1 2. Due Process Argument

2 Crotte argues that his extradition to Mexico would violate
 3 the Due Process Clause of the Constitution because Mexico has
 4 "presumed Mr. Crotte's guilt." Resp't.'s Br. at 32-33. The
 5 Government counters that U.S. constitutional protections do not
 6 apply in an extradition hearing and that questions concerning the
 7 judicial procedure in the requesting state are not proper matters
 8 for consideration by the court in the United States. Gov't.'s
 9 Br. at 19. The Court agrees. As the Supreme Court stated, "We
 10 are bound by the existence of an extradition treaty to assume
 11 that the trial will be fair." Glucksman v. Henkel, 221 U.S. 508,
 12 512 (1911). Additionally, the Ninth Circuit has stated the
 13 following with respect to the rule of non-inquiry:

14 [A]n extradition magistrate lacks discretion to inquire
 15 into the conditions that might await a fugitive upon
 16 return to the requesting country. [Citation omitted.]
 17 The extradition magistrate's authority has been
 18 constrained by statute and caselaw to a narrow inquiry,
 19 such that the magistrate judge does not have any
 20 discretion to exercise. Once the magistrate judge
 21 determines that the crime is extraditable and there is
 22 probable cause to sustain the charge, it is the
 23 Secretary of State, representing the executive branch,
 24 who determines whether to surrender the fugitive.
 25 [Quotations and citation omitted.]

26 Prasoprat, 421 F.3d at 1016; see also Holmes v. Laird, 459 F.2d
 27 1211, 1219 (D.C. Cir. 1972) ("a surrender of an American citizen
 28 required by treaty for purposes of a foreign criminal proceeding
 is unimpaired by an absence in the foreign judicial system of
 safeguards in all respects equivalent to those constitutionally
 enjoined upon American trials").

29 3. Parretti/Fourth Amendment Argument

30 Crotte contends that the request for the issuance of the

1 arrest warrant in Mexico (Doc. Evid., Ex. 13) and the Mexican
2 arrest warrant itself (*id.*, Ex. 14) were based on unsworn
3 allegations that do not satisfy the Fourth Amendment or the
4 Treaty. Resp't.'s Br. at 33-37. Crotte relies upon Parretti v.
5 United States, 122 F.3d 758 (9th Cir. 1997) (withdrawn on
6 rehearing by Parretti v. United States, 143 F.3d 508 (9th Cir.
7 1998)) in support of his argument. The Court agrees with the
8 Government, however, that Crotte's reliance upon Parretti is
9 misplaced. In Parretti, a three judge panel of the Ninth Circuit
10 held that the issuance of a provisional arrest warrant could not
11 rest solely on the existence of a foreign arrest warrant; rather,
12 it must be supported by competent evidence of probable cause.
13 Parretti, 122 F.3d at 773. There, the sole basis for the
14 allegations in the U.S. Attorney's complaint for provisional
15 arrest was the existence of a French arrest warrant. The warrant
16 itself was not attached to the complaint, nor were any other
17 affidavits or competent evidence. *Id.* at 761. Here, Mexico,
18 through the Government, has provided the actual arrest warrant as
19 well other documentary evidence, including witness statements and
20 Ministerial Attestations, and thus has presented much more to
21 support its request for extradition than just the existence of an
22 arrest warrant, as was the case in Parretti. As discussed above,
23 sufficient competent evidence has been provided to permit this
24 Court to independently find that probable cause exists to believe
25 that Crotte committed the offenses charged. Thus, Parretti is
26 distinguishable.¹⁸

¹⁸ Additionally, as noted above, the panel opinion in Parretti was withdrawn and the appeal dismissed by an en banc panel of the Ninth Circuit. See Parretti v. United States, 143 F.3d 508 (9th Cir. 1998).

1 Crotte's related argument that unsworn allegations cannot be
 2 relied upon to demonstrate probable cause has already been
 3 addressed by the Court. The admissibility of evidence in
 4 extradition proceedings is governed by the standards set forth
 5 above. See Section III.B.1., *supra*. In particular, because the
 6 Treaty does not have an oath requirement, both sworn and unsworn
 7 statements contained in properly authenticated documents are
 8 permissible. Artukovic, 784 F.2d at 1356; see also Zanazanian,
 9 729 F.2d at 627 ("Neither the applicable treaty nor United States
 10 law requires that evidence offered for extradition purposes be
 11 made under oath.")¹⁹

12 Therefore, Crotte's Fourth Amendment and Parretti arguments
 13 are without merit.

14 D. Motion to Strike Testimony of Ruben Gonzalez

15 At the conclusion of the proceedings held before this Court
 16 on September 26, 2007, the Court expressed its desire to ask Mr.
 17 Gonzalez a few questions regarding Mexican legal procedure. Tr.,
 18 54:19-21. Earlier in the hearing, the Government had made clear
 19 that Mr. Gonzalez was not being proffered as an expert witness
 20 and that he was available simply in case there were any further
 21 questions from the Court. Id., 5:12-16. Although the Government
 22 stated that it did not object to the Court asking questions of
 23 Mr. Gonzalez at the hearing (id., 55:22-56:1), it now belatedly
 24 seeks to strike his testimony. In light of the Government's
 25 explicit statement at the extradition hearing that it had no

26
 27 (en banc).

28 ¹⁹Most of the statements in this case were, in any event, either
 sworn or under penalty of perjury.

1 objection to Mr. Gonzalez answering the Court's questions, and in
2 view of the fact that it was understood by the parties and the
3 Court that Mr. Gonzalez was not testifying as an expert, the
4 Court **DENIES** the Government's motion to strike.

5 **IV.**

6 **Conclusion**

7 Based on the foregoing, the Court finds that Mexico, through
8 the Government, has provided all of the necessary information
9 required by the Treaty to succeed in its request for the
10 extradition of Aldo Omar Crotte Sainez on the charge of homicide
11 of Daniel Sandoval Abundis. Therefore, the Court **GRANTS** the
12 request for extradition with respect to this charged crime.

13 Prosecution of the battery charge is barred by the statute
14 of limitations under Mexican law. Consequently, Crotte cannot be
15 extradited to Mexico for prosecution of the charge of battery of
16 Julio Cesar Sevillano Gonzalez. The Court **DENIES** the request for
17 extradition with respect to this offense.

18 The extradition request and the supporting documents
19 admitted into evidence during the hearing are properly certified
20 and authenticated or otherwise admissible within the discretion
21 of the Court. Accordingly, the Court will certify the above
22 findings, and all documents admitted into evidence, to the
23 Secretary of State, pursuant to 18 U.S.C. § 3184.

24 **IT IS SO ORDERED.**

25 DATED: February 8, 2008

26 
27 Jan M. Adler
28 Jan M. Adler
U.S. Magistrate Judge